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**DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600**

In re Application of

Jay S. Walker, et al.

Application No. 09/350,875

Filed: July 9, 1999

For: **MULTI-TIER PRICING OF INDIVIDUAL
PRODUCTS BASED ON VOLUME
DISCOUNTS**

**DECISION ON PETITION
TO WITHDRAW THE
HOLDING OF ABANDONMENT**

This is a decision on the applicant's petition to withdraw the holding of abandonment under 37 CFR 1.181, filed in the United States Patent and Trademark Office (USPTO), on January 5, 2004.

The petition is **GRANTED**.

A review of the file record reveals that a Final rejection was mailed to the applicants on December 3, 2002. A Notice of Appeal accompanied by a request for a three month extension of time under 37 CFR 1.136(a) was received in the United States Patent and Trademark Office (USPTO) on June 5, 2003. An Advisory action was subsequently mailed to the applicants on June 12, 2003 acknowledging receipt of the Notice of Appeal and notifying applicant of the time period for filing an Appeal Brief. The application was held abandoned for failure to timely file the Appeal Brief and a notice to that effect was mailed December 15, 2003.

Applicants submit the application should not have been held abandoned because the time period for filing an Appeal Brief may be extended up to seven months from the date the Notice of Appeal is received in the USPTO (June 5, 2003). Applicants state at the bottom of page 4 of the petition that an Appeal Brief was filed January 5, 2004, however no Appeal Brief was found accompanying the petition.

The time periods set forth in sections 37 CFR 1.191 and 37 CFR 1.192 for filing an Appeal Brief are subject to the provisions of 37 CFR 1.136.

35 U.S.C. 133 sets the maximum statutory period for reply to an Office action at six months. However once a Notice of Appeal is filed, the time periods set for filing an Appeal Brief, or to correct a defect therein, are no longer statutory periods subject to the six month maximum set in 35 U.S.C. 133. These periods may in turn be extendable by up to five months under 37 CFR 1.136(a).

The Notice of Appeal properly filed on June 5, 2003 in itself extends the time period for filing the Appeal Brief (i.e. the time period for reply) to August 5, 2003. Under 37 CFR 1.136(a) this non-statutory time period for reply may be extended by up to five months to January 5, 2004.

The petition is therefore **GRANTED.**

The application will be forwarded to the Supervisory Legal Instruments Examiner to withdraw the abandonment and restore the application to pending status, before being returned to the examiner for consideration of any timely filed Appeal Brief.



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SNM/cps: 2/12/04